

**CENTRAL PUGET SOUND  
GROWTH MANAGEMENT HEARINGS BOARD  
STATE OF WASHINGTON**

|                            |   |   |
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| 1000 FRIENDS OF WASHINGTON | ) | <b>CPSGMHB Case No. 05-3-0006</b>           |
|                            | ) |   |
| Petitioner,                | ) | <b><i>(1000 Friends VII – Issaquah)</i></b> |
|                            | ) |   |
| v.                         | ) |   |
|                            | ) | <b>FINAL DECISION AND ORDER</b>             |
| THE CITY OF ISSAQUAH,      | ) |   |
|                            | ) |   |
| Respondent.                | ) |   |
|                            | ) |   |

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**SYNOPSIS**

*In response to the GMA’s Plan review and update requirement, the City of Issaquah amended its comprehensive plan and zoning map – its 2004 Plan Update and Zoning Map Update. The Plan Update includes a future land use map [FLUM] which designates portion of the City as Low Density Residential. Among the zoning districts which implement the Low Density Residential designation are the Conservancy Residential district which limits residential densities to one dwelling unit per five acres (1du/5ac) and the Single Family Estates district which limits residential densities to 1.24 du/ac. There are 6,770 acres of land designated for various land uses in Issaquah and 440 acres (6%) of the area is in these zoning districts which limit residential densities to less than 4 du/ac. Petitioner challenged the Plan Update and Zoning Map Update asserting that the City did not permit urban densities.*

*This is the second recent case in which the Board articulates the factors it would consider and weigh in determining whether a city’s designated urban densities were “appropriate urban densities.”<sup>1</sup> The Board reviewed the GMA duty for a city to accommodate the 20-year growth forecast by the Office of Financial Management, and allocated by the county. The Board concluded that while accommodating the allocated growth is a major component of the GMA, the Act’s predilection for compact urban growth and its explicit goals and requirements impose a broader framework within which local governments must plan. The Board also discussed: 1) the 4 dwelling units per acre “bright line” or safe harbor as an appropriate urban density that has provided certainty and predictability to GMA planning; 2) the circumstances when lower densities are appropriate urban densities [Litowitz test] thereby providing flexibility and*

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<sup>1</sup> The approach to determining “appropriate urban densities” applied in this case was first articulated in the *Kaleas v. Normandy Park (Kaleas)*, CPSGMHB Case No. 05-3-0007c (**05307c**), Final Decision and Order, (July 19, 2005).

*discretion; and 3) ensuring neighborhood vitality and character; but not perpetuating low-density sprawl.*

*The Board found that the continuation of existing Single Family Estate zoning (1.24 du/ac) in an area developed with large lots on septic tanks did not provide appropriate urban densities. The Board remanded, but did not invalidate, the Plan Update and Zoning Map Update, and set a compliance schedule.*

## **I. BACKGROUND<sup>2</sup>**

On November 15, 2004, the City of Issaquah adopted Ordinance No. 2404 (the **Ordinance**). A notice of adoption of the Ordinance was published on November 24, 2004. The Ordinance amended the City's Comprehensive Plan and Zoning Map and is the City's comprehensive plan revision under the provisions of RCW 36.70A.130(4), hereafter the **Plan Update**. The Plan Update includes a Future Land Use Map (**FLUM**), which designates portions of the City as Low Density Residential. Among the Comparable Zoning Districts shown on the FLUM for the Low Density Residential Land Use Designation are Conservancy Residential (**C-Res**), Single Family Estates (**SF-E**) and Single Family Low (**SF-L**) districts which permit residential densities of less than 4 dwelling units per acre (**4 du/ac**).<sup>3</sup> The legend on the Zoning Map amended by the Ordinance (**Zoning Map Update**) includes the Conservancy Residential and Single Family Estates districts, but not the Single Family Low district.

On January 21, 2005, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from the 1000 Friends of Washington (**Petitioner** or **1000 Friends** or **Futurewise**<sup>4</sup>). The PFR was timely filed. Petitioner challenges the City of Issaquah's (**Respondent** or the **City**) adoption of the Ordinance. Petitioner asserts the City's Plan Update and FLUM do not provide for appropriate urban densities.

On February 22, 2005, the Board received Respondent's Index of Record (**Index**) and held a prehearing conference (**PHC**). The Board issued its Prehearing Order (**PHO**), setting forth a final schedule for proceedings in this case and the legal issues which the Board will address, on February 23, 2005. There were no motions to supplement the record nor dispositive motions filed in this matter.

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<sup>2</sup> See Appendix A for the complete procedural history of this case.

<sup>3</sup> The legends of the FLUM and the Zoning Map Update identify these districts as follows: C-Res Conservancy Residential – 1 du/5 acres; SF-E Single Family Estates – 1.24 du/acre; SF-L Single Family Low – 2.9 du/acre.

<sup>4</sup> Subsequent to the filing of the PFR, 1000 Friends of Washington changed its name to Futurewise. The Case name will continue to reference 1000 Friends of Washington, but the text will use the current name, Futurewise.

All briefings were timely filed, and are hereafter referenced as: Futurewise' Prehearing Brief (**PHB**); City's Prehearing Brief (**Response**); Futurewise Reply Brief (**Reply**).

On May 25, 2005, the Board conducted the Hearing on the Merits (**HOM**) in the Fifth Floor Conference Room, 900 Fourth Avenue, Seattle, Washington. Board Members Margaret Pageler, Edward McGuire and Bruce Laing, Presiding Officer, were present for the Board. Lauren Burgon and John Zilavy represented the Petitioner. Wayne Tanaka and Vicki Orrico represented the City. Court reporting services were provided by Eva Jankovits, Beyers & Anderson, Inc. During the HOM the Board received from the City a map entitled City of Issaquah Zoning Map, 11/29/04, Ord. 2404 (**HOM Exhibit No.1**). The parties agreed that subsequent to the HOM the City would advise the Board, with copy to Petitioner, whether Issaquah Ordinance No. 2404 was the only ordinance adopted by the City as part of the 2004 comprehensive plan review and update. HOM convened at 10:00 a.m. and adjourned at 11:40 a.m.

On May 27, 2005, the Board received Issaquah's Response to Inquiry Regarding Ordinances with three attachments, including Ordinance No. 2405 amending the City's Land Use Code.

On May 31, 2005 the Board received the HOM transcript from Beyers & Anderson, Inc.

On June 3, 2005, the Board received Futurewise' Response to Issaquah's Post Hearing-on- the-Merits Submittal.

## **II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF and STANDARD OF REVIEW**

Petitioners challenge Issaquah's adoption of its Plan Update, as adopted by Ordinance No. 2404. Pursuant to RCW 36.70A.320(1), Issaquah's Ordinance No. 2404 is presumed valid upon adoption.

The burden is on Petitioner, Futurewise, to demonstrate that the actions taken by Issaquah are not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless it determines that the action taken [by Issaquah] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." For the Board to find Issaquah's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

Pursuant to RCW 36.70A.3201 the Board will grant deference to Issaquah in how it plans for growth, provided that its policy choices are consistent with the goals and requirements of the GMA. The State Supreme Court's most recent delineation of this required

deference states: “We hold that deference to county planning actions that are consistent with the goals and requirements of the GMA . . . cedes only when it is shown that a county’s planning action is in fact a ‘clearly erroneous’ application of the GMA.” *Quadrant Corporation, et al., v. State of Washington Growth Management Hearings Board*, 154 Wn. 2d 224, 248, 110 P. 3d 1132 (2005). The Quadrant decision affirms prior State Supreme Court rulings that “Local discretion is bounded . . . by the goals and requirements of the GMA.” *King County v. Central Puget Sound Growth Management Hearing Board (King County)*, 142 Wn.2d 543, 561, 14 P.3d 133, 142 (2000). Division II of the Court of Appeals further clarified, “Consistent with *King County*, and notwithstanding the ‘deference’ language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a . . . plan that is not ‘consistent’ with the requirements and goals of the GMA.” *Cooper Point Association v. Thurston County*, 108 Wn. App. 429, 444, 31 P.3d 28 (2001); *affirmed Thurston County v. Western Washington Growth Management Hearings Board*, 148 Wn2d 1, 15, 57 P.3<sup>rd</sup> 1156 (2002) and cited with approval in *Quadrant*, fn. 7.

The scope of the Board’s review is limited to determining whether a jurisdiction has achieved compliance with the GMA with respect to those issues presented in a timely petition for review.

### **III. PREFATORY NOTE AND BOARD JURISDICTION**

#### **A. PREFATORY NOTE**

Ordinance No. 2404, the Plan Update and Zoning Map Update is the only matter presented for review by this Board. Ordinance No. 2405, amending the City’s Land Use Code was not directly challenged. Among the “Comparable Zoning Districts” shown on the Future Land Use Map (**FLUM**) for the Low Density Residential Land Use Designation are Conservancy Residential, Single Family Estates and Single Family Low districts, which limit residential densities to less than 4 dwelling units per acre (**4 du/ac**). The legend on the Zoning Map Update includes the Conservancy Residential District, and Single Family Estates District, but not the Single Family Low District. This Order focuses on whether the challenged provisions of Ordinance No. 2404 – the Plan Update and Zoning Map Update – comply with the GMA. The PFR challenges Ordinance No. 2404 as not providing appropriate urban densities within an urban growth area (**UGA**).

#### **B. BOARD JURISDICTION**

##### **Timeliness.**

##### Positions of the Parties.

Issaquah contends that Petitioner’s complaint is not timely because the petition attempts to challenge zoning designations adopted between five and fourteen years earlier. City Response, at 11. The City asserts that the challenged Ordinance #2404 and the

comprehensive plan amendments did not make changes to the zoning designations the Petitioner challenged in its brief. City Response, at 12. Since petitions regarding compliance with the GMA must be filed within sixty days of the adoption's publication, Issaquah argues that Petitioner cannot attack these zoning designations now by challenging comprehensive plan amendments that do not affect the zoning designations by characterizing them as a failure to act. City Response, at 12.

Futurewise asserts that their challenge is for failure to comply, not failure to act. Futurewise Reply, at 4. Petitioner acknowledges that Issaquah acted by reviewing and revising its comprehensive plan, but contends that the City's review does not bring the comprehensive plan into compliance with the GMA. Futurewise Reply, at 4.

In response, Issaquah argues that the comprehensive plan and the contested ordinance have no connection to the zoning districts which are established by the zoning code. HOM, at 21-22. Since no zoning designations were changed, Issaquah contends that the time for bringing challenges to its zoning designations was between five and fourteen years ago and Petitioner's claim is far too late. HOM, at 23.

#### Discussion.

Under the provisions of RCW 36.70A.130(1) and (4), Issaquah was required to "...take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter...", by December 1, 2004. Legislative action "...means the adoption of a resolution or ordinance following notice and a public hearing indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefore." Issaquah's Plan Update and Zoning Map Update were adopted in Ordinance No. 2404 in response to these provisions. All of the Comprehensive Plan and the Zoning Map, whether revised from previous versions or not, are required to comply with the Act, and are subject to a timely challenge.

#### Finding

The Board finds that the Futurewise PFR was timely filed, pursuant to RCW 36.70A.290(2).

### **Standing and Subject Matter Jurisdiction**

The Board finds that Petitioner has standing to appear before the Board, pursuant to RCW 36.70A.280(2). Finally, the Board finds that, pursuant to RCW 36.70A.280(1)(a), the Board has subject matter jurisdiction over the challenged ordinance, Ordinance No. 2404 – the Issaquah Plan Update and Zoning Map Update.

#### **IV. LEGAL ISSUE AND DISCUSSION**

##### **URBAN GROWTH and APPROPRIATE URBAN DENSITIES**

##### **LEGAL ISSUE NO. 1<sup>5</sup>**

**Does the adoption of *Ordinance 2404*, adopting an updated and revised comprehensive plan, fail to comply with RCW 36.70A.130, RCW 36.70A.020(1) and RCW 36.70A.110 when the updated comprehensive plan continues to allow residential development within an *urban growth area* at less than four units per acre? These areas at issue are located within an *urban growth area* and are exclusive of environmentally sensitive systems that are large in scope, complex in structure and functions, and carry a high rank order value. (e.g., watershed or drainage sub-basin).**

See PHO, at 6.

##### **Applicable Law**

The relevant provisions of the GMA at issue in this matter provide as follows:

Issaquah's Plan and development regulations are to be guided by Goal 1 – "Encourage urban development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner." RCW 36.70A.020(1).

The City of Issaquah, by definition, is within an urban growth area. The UGA provisions of the Act provide: "Each urban growth area shall permit urban densities and shall include greenbelt and open space areas." RCW 36.70A.110(1).

Issaquah, as a city within King County, was required to conduct a review and evaluation of its Plan and development regulations and revise them, as necessary, to "ensure the plan and regulations comply with the requirements [of the Act]" by December 1, 2004. RCW 36.70A.130. Ordinance No. 2404 was adopted within this statutory timeframe. However, Petitioners contend that the City merely readopted allegedly noncompliant density designations in violation of the Act.

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<sup>5</sup> Petitioner challenges the City of Issaquah's Plan Update and FLUM for not providing appropriate urban densities as required by the GMA, specifically in RCW 36.70A.020(1), .110 and .130. Although the stated Legal Issue focuses on the residential density question, the briefing presented arguments about the GMA duty to accommodate urban growth as well as the requirement to provide for appropriate urban densities. Therefore, the Board will address these arguments in its discussion.

## Positions of the Parties

Petitioner Futurewise first contends that the GMA requires each city within urban growth areas (UGAs) in the Puget Sound region to designate lands within its jurisdiction at appropriate urban densities. Futurewise PHB, at 6-7. Petitioner asserts the bright line rule established by this Board is that a residential density of four net dwelling units per acre satisfies the low end of the GMA. Futurewise PHB, at 6-7. Any residential development at a lower density constitutes urban sprawl. Futurewise PHB, at 10. The City of Issaquah, located within a Puget Sound UGA, allows densities lower than 4 dwelling units per acre on 77 percent of its vacant or redevelopable residential land. Futurewise PHB, at 5. A change in the city's comprehensive plan to increase zoning to 4 dwelling units per acre would increase the single-family zoning capacity in the city by 41 percent. Futurewise PHB, at 10.

Second, Petitioner acknowledges the Board has recognized exceptions to the bright line rule to protect critical areas with specific attributes. Futurewise PHB, at 11. Petitioner claims that none of the areas identified by the City of Issaquah meet the criteria to qualify for reduced densities (*i.e.*, environmentally sensitive systems large in scope, with complex structure and function and high rank order value—*Litowitz* test). Futurewise PHB, at 12. Petitioners allege specifically that one identified area already contains high-density commercial zoning, another contains high-density residential, and none of the identified areas are of the scale, complexity, and value necessary to qualify for a *Litowitz* density exception (citations omitted). Futurewise PHB, at 13-14.

Last, Petitioner asserts that although the GMA encourages the preservation of the vitality and character of established residential neighborhoods, patterns of low-density development cannot be perpetuated without constituting sprawl and violating the GMA (citations omitted). Futurewise PHB, at 14.

In response, the City of Issaquah first contends that the selective use of low-density zoning (single family estate and conservancy residential) in its comprehensive plan is directly linked to the critical areas found in specific areas of the City. City Response, at 9. The City argues that critical areas located in zones challenged by Petitioner are not isolated, sporadic occurrences, as Petitioner claims, but large environmentally sensitive systems with complex structures and functions and high rank order value. City Response, at 17-18. Issaquah contends that the GMA does not prevent a city from taking cautions beyond buffers to protect critical areas against environmental impact, and that the GMA encourages local discretion in deciding how to protect these areas. HOM, at 36.

The City acknowledges that development already exists in these critical areas<sup>6</sup>, but argues that existing development in critical areas does not justify a further burden on and

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<sup>6</sup> Issaquah distinguishes that the commercial nursery Petitioner cites as evidence supporting higher density development was established before City annexation of the property. City Response at 19.

degradation of those areas. City Response, at 19. The City contends its comprehensive plan intentionally concentrates density in appropriate areas to better protect remaining relatively undisturbed critical areas. Issaquah Response, at 19.

Second, Issaquah asserts it has already satisfied the GMA mandates for density to accommodate its King County Adopted Housing Target by the year 2022. City Response, at 21. Although required to accommodate projected populations with over 6,000 housing units by 2005, the City currently has a residential capacity of 9,000 to 11,000 housing units, roughly two to three times the capacity assigned for 2022. City Response, at 9-10. The City has provided this capacity through the use of the urban village innovative technique that provides appropriate urban densities while protecting critical areas. City Response, at 10. The City argues that the GMA contains more goals than simply urban density and reduction of sprawl and the City has used the comprehensive plan to achieve other goals, including concentrating public facilities and services to support development in areas of growth and preserving environmentally sensitive areas. City Response, at 20.

Although the City claims the data in Petitioner's brief is irrelevant, since the City is not required to carry higher densities than provided in its comprehensive plan, it disputes Petitioner's facts and calculations. City Response, at 10. Issaquah charges that Petitioner misinterpreted the Buildable Lands Table, resulting in erroneous and inflated figures for low-density development in an urban growth area. City Response, at 11. The City claims the challenged zones actually consist of only 2.3 percent, rather than 77 percent, of total City land area. City Response, at 11. The City also claims that Petitioner's calculations omit certain types of residential capacity, transpose figures, and do not account for housing provided by accessory dwelling units. City Response, at 11.

Finally, Issaquah challenges the Board-created 4 dwelling units per acre bright line rule. The City argues that the rule is unnecessary to fill any gap in GMA provisions and is contrary to the guidelines in the Washington Administrative Code, which specifically state that "there is no exclusive method for accomplishing the planning and development regulation requirements of the act." WAC 365-195-020. City Response, at 23. The City claims the Act is not focused on specific outcomes, but on the analytical planning process and that holding a city to a hard-line rule would expressly run contrary to the Act's articulated purpose. City Response, at 24.

The City points out that the GMA has been amended to reinforce its mandate for flexibility since the cases Petitioner relies on. Cities are now only required to:

ensure that, taken collectively, adoption of and amendments to their comprehensive plans and/or development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, as adopted in the applicable countywide planning policies and consistent with the twenty-year population forecast from the Office of Financial Management. RCW 36.70A.115.

The City contends that because it has met and exceeded density requirements, it is legally authorized to exercise its discretion to make choices about accommodating growth and distributing it into zones of varying density within the City limits. City Response, at 24. Issaquah argues nothing in the language of the GMA mandates that cities zone *every* residential area to a density of 4 dwelling units per acre or higher. City Response, at 24.

Supporting this argument, the City highlights that cities must comply with all thirteen planning goals of the GMA, with no goal held more important than any other. City Response, at 25. Issaquah asserts that by creating a 4 dwelling units per acre mandate, which addresses only two of the goals, encouraging urban density and reducing sprawl, the Board nullifies the direct mandates of the Act. City Response, at 25.

Issaquah contends that the 4 dwelling units per acre formula for urban development is a threshold, with densities above this level presumed to satisfy the GMA. The City refers to the Board's decision in *Benaroya* that specifically rejected the argument that less than 4 dwelling units per acre is not urban (citations omitted). HOM, at 32.

The City argues that if there is a 4 dwelling units per acre bright line rule, exceptions to the rule are not limited to an exclusively environmental basis. HOM, at 33. Exceptions for equestrian developments were permitted in *Bremerton*, and Issaquah contends that the Board has left open the possibility of other reasons. HOM, at 33.

Issaquah suggests a different set of factors for determining GMA compliance. HOM, at 40. The City contends that the Board should examine the city as a whole, its pattern of development, and whether the city has achieved its housing goals. HOM, at 40. The City also points out that the GMA does not require the city to achieve each of the goals simultaneously. HOM, at 41.

Futurewise responds with the contention that Issaquah's use of low-density zoning to protect environmentally sensitive areas is over-inclusive. Futurewise Reply, at 8. Petitioner asserts that those critical areas would be better served by buffers and direct environmental protections. Futurewise Reply, at 8. Petitioner also argues that sensitive areas exist throughout the city, and singling out certain areas as requiring special protection is illogical, and a poor justification for requiring lower densities in the contested areas. HOM, at 10. Specifically, Petitioner points out that the largest challenged area is located over a medium aquifer zone, but much of the city is over a high aquifer zone, indicating that no special protection is necessary in this area. HOM, at 12.

Petitioner agrees that the bright line rule has never been absolute, although only because of *Litowitz* exceptions. Futurewise Reply, at 12. Petitioner asserts that the Board interpretation allows for flexibility, but that flexibility is not absolute, and is limited at the low range to 4 dwelling units per acre. Futurewise Reply, at 12. Petitioner contends that below that threshold development is not urban. HOM, at 56. Futurewise argues that no exceptions have been made to the 4 dwelling units per acre rule except the two already

allowed, and to permit more would allow the exceptions to overwhelm the rule. HOM, at 56.

In response to the City's claim that it has already provided housing sufficient for allocated growth through 2022, Petitioner contends that the City is required to do more than accommodate projected population, it has an affirmative duty to foster and stimulate urban growth in its UGA. Futurewise Reply, at 11.

Finally, Futurewise acknowledges transposition of numbers on two pages of its PHB, but contends that all calculations in the brief are based on the correct numbers of acres. Futurewise Reply, at 13. Their calculations are based on their understanding that the "2-4 du/ac" designation in the Issaquah Buildable Lands Chart, Futurewise PHB, at 5, included any development below and no development at greater density than 4 dwelling units per acre land. HOM, at 19-20.

## Discussion

### Background.

Since the December 1, 2004 Plan Update deadline has come and gone, the Board has received numerous PFRs challenging whether various cities have provided for "appropriate urban densities" as part of their respective "compliance reviews." This rush of cases has given the Board the opportunity to consider the "appropriate urban density" question in a broader context than ever before. Consequently, this FDO articulates the factors the Board will consider and weigh when an "appropriate urban density" challenge is presented. These factors provide a broader context for understanding the role urban density plays in fulfilling the mandates of the GMA. Review of these factors enables the Board to determine compliance with the Act and assess whether the local government's decision was clearly erroneous.

In short, the factors the Board will consider when a PFR is filed that challenges whether a city's urban densities are appropriate and comply with the GMA, include:

- Whether the jurisdiction is able to accommodate its share of the 20-year growth forecast by the Office of Financial Management, and allocated by the County, now and in the future;
- Whether the jurisdiction is encouraging and stimulating urban growth within its borders;
- Whether the jurisdiction is providing for compact urban growth consistent with those Goals of the Act that are typically fulfilled and furthered by providing for urban densities;
- Whether the jurisdiction has determined that its critical areas regulations do not adequately protect identified and designated critical areas;

- For those areas within the jurisdiction designated below 4 dwelling units per acre (based upon the Board’s “bright-line” or “safe harbor”) do those areas:
  - Contain large scale, complex, high value critical areas that require the additional level of protection provided through lower densities than can be provided by the jurisdiction’s existing critical areas regulations [*Litowitz test* – hydrologically focused].
  - Contain limited unique geologic or topographical features that require the additional level of protection provided through lower densities than can be provided by the jurisdiction’s existing critical areas regulations [expansion of *Litowitz test*].
  - Contain existing equestrian communities [*Bremerton*].
  - Perpetuate an existing low density pattern.
  - Fall within a “phasing area” where the city has adopted an explicit phasing program for the provision of urban services and facilities that limits densities until a date certain, within the Plan’s time horizon, when adequate urban services and facilities will be provided; and
- Whether the jurisdiction, as a whole, is providing for appropriate net urban densities as required by the goals and requirements of the Act, considering:
  - The portion of the jurisdiction’s residential land that is designated at densities of 4 du/ac or more (in particular, the extent to which considerably higher densities are allowed and encouraged); and
  - The portion of the jurisdiction’s residential land that is designated at densities less than 4 du/ac; and what portion of this land is vacant, underdeveloped and appropriate for redevelopment and infill.

The Board now applies these factors to the issue before it.

The Action Challenged:

Ordinance No. 2404 amended the City’s Comprehensive Plan and Zoning Map and is the City’s comprehensive plan revision under the provisions of RCW 36.70A.130(4). This Plan Update includes a FLUM which designates portions of the City as Low Density Residential. Among the Comparable Zoning Districts shown on the FLUM for the Low Density Residential Land Use Designation are C-Res, SF-E and SF-L districts which permit residential densities of less than 4 du/ac. The legend on the Zoning Map Update includes the C-Res and SF-E districts, but not the SF-L district. Petitioner challenges these retained Plan and Zoning designations as not providing for appropriate urban densities.

Issaquah is comprised of 6,819 total acres<sup>7</sup> of which 6,770 acres have zoning classifications, the 49 acre balance being in City rights-of-way and other unclassified

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<sup>7</sup> All acreage figures in this discussion are approximate acreages

uses.<sup>8</sup> The Conservancy Residential District applies to 47 acres and the Single Family Estates District applies to 393 acres, a total of 440 acres in districts which limit residential densities to less than 4 du/ac. The Single Family Low District has not been applied to any part of the City. Together these designations encompass approximately 6% of the total zoned acres in the City. There are 2,490 acres of vacant and redevelopable land in the City, of which 244 acres or approximately 10% is within the Conservancy Residential and Single Family Estates districts.<sup>9</sup>

*Is Issaquah able to accommodate its share of the 20-year growth forecast by the Office of Financial Management, and allocated by the County, now and in the future? – Yes.*

In lieu of allocating a portion of the County’s projected *population* growth to each of its jurisdictions, King County adopts and assigns “Household Growth Targets” to be accommodated by each of its local jurisdictions. For the period 1993-2012, King County assigned Issaquah a household growth target, the additional growth it was to accommodate, of 3,391 dwelling units. Index 1, at iv. The County’s 2002 Buildable Land Report (**BLR**) indicates that in the period 1993-2000 the City accommodated 3,033 of the 3,391 dwelling unit growth target for 2012. Index 3, at 59. The City achieved 89% of the 20 year target in eight years. *Id.* The BLR states that in 2000 the City’s remaining target for 2012 was 358 dwelling units while its capacity was 8,877 new dwelling units, a surplus capacity of 8,519 dwelling units. *Id.*

The GMA requires OFM to produce periodic population projections<sup>10</sup> and it requires cities and counties to accommodate these new growth forecasts by reviewing and updating their Plans and development regulations accordingly. RCW 36.70A.130. The Act also imposes a consistent and ongoing duty for all GMA jurisdictions, including Issaquah, to accommodate the ensuing growth periodically projected by OFM and allocated here by King County. RCW 36.70A.110 So long as the state and region continue to grow, counties and cities must continue to plan for, manage, and accommodate the projected and allocated growth.<sup>11</sup>

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<sup>8</sup> The Board takes Official Notice of the City of Issaquah Demographic and Community Profile (**City Profile**), January, 2005, published on the City of Issaquah web site: [www.ci.issaquah.wa.us](http://www.ci.issaquah.wa.us). See tables entitled Acreage by Zoning and Acreage by Land Use Designation prepared by the Issaquah Planning Department, 2004. City Profile, at 2.

<sup>9</sup> *Id.*, at 5. See table entitled Vacant and Redevelopable Land.

<sup>10</sup> RCW 43.62.035 requires OFM to prepare a 20-year population projection, as required by RCW 36.70A.110, at least every five years.

<sup>11</sup> At theoretical “build-out,” when *all* developable vacant and undeveloped land is developed, a GMA jurisdiction’s “growth accommodation” obligations do not disappear, but instead are redirected toward redevelopment possibilities and opportunities.

In November, 2002, new household growth targets were established by King County to guide growth for the period 2001 – 2022.<sup>12</sup> 2004 King County Comprehensive Plan (2004 KCCP), at 2-4. Issaquah’s growth target for the twenty year planning period from 2001 to 2022 is 3,993 households. Index 1, at iv. The 2004 King County Annual Growth Report<sup>13</sup>(2004 KCAGR) indicates that in the period 2001 – 2003 Issaquah accommodated 1,163<sup>14</sup> of the 3,993 dwelling unit growth target, leaving a year 2022 target balance of 2,830 units. Subtracting the 1,163 new dwelling units from the year 2000 surplus capacity of 8,519 dwelling units<sup>15</sup> leaves a surplus capacity of 7,356 in the year 2004, assuming no additional capacity was added by the city during the period 2001 – 2003.

The Issaquah Plan Update presents more current projections of the city’s household capacity. Index 1, Vol.1, App. 1, at L-1 and L-2. There the following figures are presented for the planning period ending in the year 2022: Household Capacity = 9,287 households; Growth Target = 3,993 dwelling units; Projected dwelling unit approvals in addition to Growth Target = 2,503; Surplus Capacity in the year 2022 = 2,791 dwelling units.

Issaquah is able to accommodate its share of the 20-year growth forecast by the Office of Financial Management, and allocated by the County, now and in the future.

*Is Issaquah encouraging and stimulating urban growth?* – **Yes.**

In addition to accommodating growth, jurisdictions need to encourage growth within their respective boundaries. In *Benaroya, et al. v. City of Redmond (Benaroya I)*, CPSGMHB Case No. 95-3-0072c, Finding of Compliance, (March 13, 1997), the Board stated:

[J]ust as the GMA has required counties to alter past practices by discouraging more dense and intense development in rural areas, so, to must cities alter past practice by now actively encouraging urban growth within their corporate limits and their county-designated UGAs.

...

In view of the various provisions of the Act regarding the role of cities as the primary providers of urban governmental services, the Act’s predilection for compact urban development (footnote omitted), and the above cited provisions of *Edmonds* [duty to accommodate allocated

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<sup>12</sup> The Board takes official notice of the 2004 King County Comprehensive Plan, [www.metrokc.gov/dces/compplan/2004](http://www.metrokc.gov/dces/compplan/2004).

<sup>13</sup>The Board takes official notice of the 2004 King County Annual Growth Report, [www.metrokc.gov/budget/agr](http://www.metrokc.gov/budget/agr).

<sup>14</sup> 2004 KCAGR, at 68.

<sup>15</sup> BLR

population and employment growth] and *Hensley II* [growth accommodation duty must be reflected in land use designations and capital facility element]<sup>16</sup>, the Board agrees with the heart of Petitioners' argument. **The Board holds that the GMA imposes an affirmative duty upon cities to “give support to,” “foster” and “stimulate” urban growth throughout the jurisdictions’ UGAs within the twenty-year life of their comprehensive plans.**

*Benaroya I*, 3/13/97 Order, at 8, (emphasis in original).

The discussion above, at 13 indicates Issaquah is encouraging and stimulating population growth by providing new dwelling unit capacity in an amount that exceeds its 20 year household growth target, and at a rate that exceeds the average annual rate required to meet that target. City planning department projections indicate Issaquah’s population will increase from 15,510 in the year 2004 to 25,510 in the year 2022.<sup>17</sup>

Issaquah’s land use designations demonstrate the City is fulfilling its duty to accommodate both population and economic growth. The City contains 6,770 acres of land designated for various land uses. Of that total: 40% is designated for residential use; 21% for community facilities; 16% for office, retail and commercial uses; 13% for Urban Village<sup>18</sup>; and 10% for conservancy<sup>19</sup>.

Issaquah is encouraging and stimulating urban growth.

*Is Issaquah providing for compact urban growth consistent with the relevant “urban density” Goals of the Act? - Yes.*

As the Board described in one of its early cases, the *physical form* the GMA is pursuing in its mission to curb sprawl is “a compact urban landscape.” *Bremerton v. Kitsap County (Bremerton)*, CPSGMHB Case No. 95-3-0039, Final Decision and Order, (Oct. 9, 1995), at 29. The Board noted that the Puget Sound region is already inclined to this physical form – “This region’s far greater population density, physiography, projected growth and concentration of local governments, set it apart from other regions of the state (footnotes omitted).” *Id.* With the aide of the GMA, the Puget Sound region continues to

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<sup>16</sup> See *Edmonds , et al. v. Snohomish County*, CPSGPHB Case No. 93-3-0005, Final Decision and Order, (Oct. 4, 1993); and *Hensley v. City of Woodinville (Hensley II)*, CPSGMHB Case No. 96-3-0031, Final Decision and Order, (Feb. 25, 1997).

<sup>17</sup> City Profile, at 9.

<sup>18</sup> The Urban Village designation provides the opportunity for mixed use development, clustering, phasing of infrastructure, and protection of critical areas on larger parcels.

<sup>19</sup> 325 acres of the conservancy designation is Mineral Resource land which involves gravel mining and processing.

be a compact urbanized area; almost 10 years of growth and development have occurred within virtually the same geographic urban area<sup>20</sup> described in the *Bremerton* case.

Residential development is a major component of the region's compact urban form. Therefore, as growth continues, higher residential urban densities become a corollary to compact urban development. However, density is not necessarily an end in itself; it is a means of achieving numerous goals articulated in the GMA – goals which are to guide all GMA planning jurisdictions.

For example, allowing higher residential densities in areas and neighborhoods where urban services and facilities already exist, or are readily available, increases service efficiencies and can lower the costs of providing urban services. The per capita cost of providing urban services tends to be lower when development is compact and at higher densities. [Goals 1 and 12 and RCW 36.70A.110 and .070(3)]. Increasing densities in urban areas prevents the inappropriate conversion of undeveloped land thereby curbing the perpetuation of sprawl. Compact urban development is the antithesis of sprawl. [Goal 2 and RCW 36.70A.110]. Higher urban densities at locations along major transportation corridors and allowing mixed uses at designated centers support transit and other alternative forms of transportation as well as encourage economic development. [Goals 3 and 5 and RCW 36.70A.070(6) and (7)]. Higher density single family and multifamily housing (*i.e.* apartments, condominiums and townhouses) add variety to housing alternatives within urban areas and help in making housing affordable for all segments of the population. [Goal 4 and RCW 36.70A.070(4)]. Likewise, increasing the intensity and density of development in urban areas is a means of preserving our natural resource industries and historical or archaeological sites, protecting open space and the environment. [Goals 8, 9, 10 and 13 and RCW 36.70A.070(8), .050, .060, .170 and .172].

The Department of Community, Trade and Economic Development's (CTED) publication, *Urban Densities – Central Puget Sound Edition*, September 2004, also notes the benefits of compact development and their relationship to the Goals of the GMA.

This guidance paper from CTED explains,

Compact development is the antithesis of sprawl. Characteristics of compact communities include development that is contiguous to the existing urban areas and characterized by the coordinated provision of urban services and that includes a range of uses at urban densities, a variety of housing types, and a greater variety of housing options. There

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<sup>20</sup> There are approximately 6,288 square miles within the four counties comprising the CPS region. 1,035 square miles are within UGAs (16% of the land area). Incorporated CPS cities constitute about 684 square miles (11% of the land area). In 2000, 85% of the region's population lived within the UGAs and 65% of the region's population resided within cities. See Puget Sound Regional Council – Trends – No. D6 July 2001 and Table 1B Urban Area and Population -2000 CPSGMHB Digest of Decisions, Second Edition, 1992-2001 – [out of print]

are several benefits of a more compact pattern of urban development directly related to the goals of the GMA. There is evidence that residents in more compact communities tend to drive fewer miles than those in more sprawling areas (footnote omitted).

Higher urban densities also tend to reduce housing costs. More dense urban development implicitly results in smaller lot sizes for single family and multifamily housing forms. Both of these typically provide less expensive housing options. These are some of the important reason why the GMA emphasizes compact urban form as a strategy for accommodating growth. It is also why Goal 4, Housing, emphasizes provision of a variety of housing types at a range of densities. The greater the variety of housing types, the more segments of the population are likely to find housing that suits their needs.

Index 18, at 3.

Consequently, providing for higher residential densities fulfils numerous GMA goals and requirements, provides balance among the goals and plays a pivotal role in GMA planning to create a compact urban landscape.

Turning to Issaquah, we observe that during the time period 2000 – 2003 the City authorized 1,243 new dwelling units, 667 (54%) multiple family units and 576 (46%) single family units. 2004 KCAGR, at 70-71. In 2003, 4,411 (57%) of Issaquah's total existing housing units were multiple family units and 3,313 (43%) were single family units. *Id.* at 59.

The City Profile includes tables showing Acreage by Zoning and Acreage by Land Use Designation for Issaquah in 2004. Of the 6,770 acres in designated land uses, 35% is designated single family residential, 5% multiple family residential, 13% urban village, and 16% office, retail and commercial designations. City Profile, at 2.

Of the 2,343 acres designated in the Plan Update for single family use, 440 acres are in zoning districts which permit densities ranging from 1 du/5ac to 1.24 du/ac (less than 4 du/ac) and 1,903 acres are in zoning districts which permit densities ranging from 4.5 to 7.26 du/ac<sup>21</sup> (more than 4 du/ac.) Index 1, Land Use and Zoning maps; and City Profile, at 2.

Issaquah's multiple family zoning districts permit densities ranging from 14.52 to 29.0 du/ac. Among the City's multiple family zoning districts is a Mixed Use Residential District which the Issaquah Municipal Code (**IMC**) describes as follows:

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<sup>21</sup> 42 acres of the City is in a Single Family Duplex district which permits 14.52 du/ac. City Profile at 2.

Mixed Use – Residential – MUR: The primary purpose of the mixed use residential zone is to provide for a residential zone that also permits compatible uses that had previously been permitted through the now sunsetted “Hyphen Zone” provision (Ord. No. 2108). Permitted uses in the MUR zone include those listed in the Table of Permitted Land Uses (Chapter 18.04 IMC). In addition to the objectives stated in the Purpose and Intent section of this chapter, the following objectives also apply to this district:

1. Provide a transition area where both residential and commercial/retail uses with limited impacts can co-exist;
2. Achieve compatibility of uses through design development standards;
3. Provide opportunities for senior housing that is compatible with the existing, established neighborhood;
4. Locate senior housing within full range of urban services, including transportation alternatives and pedestrian access;
5. Encourage the reuse and remodeling, rather than demolition, of historic buildings to provide alternative housing opportunities;
6. Provide opportunities for a variety of residential dwellings in direct proximity to commercial and retail services

#### IMC 18.06.100(G)

The FLUM designates 889 acres, 13% of the City, as Urban Village. The Plan Update describes the urban village designation, implemented by the Urban Village District – UV, as follows:

UV Urban Village: The UV designation recognizes that master planning of larger parcels provides the opportunity for mixed use development, clustering, phasing of infrastructure, and protection of critical areas. The purpose and intent of this designation is to encourage innovative uses, sites and comprehensive planning of large land parcels to provide opportunities for: reasonably priced housing; enhanced public services and concurrency; infrastructure solutions and improvements; and creative land development through clustering, permanent preservation of wetlands and other natural areas, integration of recreational facilities and phasing of infrastructure.

Plan Update, at 23.

Issaquah clearly provides for compact urban growth consistent with those Goals of the Act that are typically fulfilled and furthered by providing for urban densities.

Has Issaquah determined that its critical areas regulations do not adequately protect identified and designated critical areas. **Yes.**

The Plan Update defines critical areas and follows:

**CRITICAL AREAS:** Critical areas are any of those areas in King County and the City which are subject to natural hazards or those land features which support unique, fragile or valuable natural resources including fish, wildlife and other organisms and their habitat and such resources which in their natural state carry, hold or purify water. Critical Areas include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas.

Plan Update, at 3

Issaquah has identified and mapped the following types of critical areas within the City: Coal mines, streams, wetlands, steep slopes, areas subject to erosion, flooding, landslides, and seismic activity and aquifer recharge areas. And the City has adopted critical area regulations. IMC 18.10.340-.930

The City has also adopted the following policy for low density residential designations in areas with critical areas:

Those areas with critical areas shall be appropriate for low density residential, with the intent to protect environmentally critical areas from impacts associated with more intensive development. These environmentally critical areas are valued as a community resource, both for conservation purposes and public enjoyment; provided, that the environmentally critical areas are protected, low density single family residential use may be appropriate.

Plan Update, at 23. Table L-3 – Land Use Designations: Purpose and Intent.

The Issaquah zoning code includes the following statements of purpose for the two contested zoning districts:

- A. Conservancy/Residential – C-Res (1 du/5 acres): The primary purpose of this district is to protect environmentally critical areas, including, but not limited to, wetlands, hillsides, wildlife habitat, flood hazard and recharge areas from impacts associated with more intensive development. These environmentally critical areas are valued as a community resource, both for conservation purposes and public enjoyment; provided, that the environmentally critical areas are protected, low density single family

residential use may be permitted as governed by the Table of Permitted Land Uses. Only minimum clearing for site preparation shall be permitted in order to protect and preserve the surrounding conservancy area, and the scale of homes shall blend and be compatible with the surrounding conservancy area...

- B. Single Family – Suburban Estates – SF-E (1.24 du/acre): The primary purpose of this district is to provide for single family neighborhoods and hobby farms in a setting of larger lots, while protecting environmentally critical areas, including, but not limited to, wetlands, steep slopes, flood hazard areas etc. Environmentally critical area constraints shall be addressed through larger lot zoning provisions of a high ratio of pervious/impervious surfaces. Permitted uses include detached single family homes. Other uses are permitted as governed by the Table of Permitted Land Uses. Recreational uses which serve the neighborhood are also permitted; provided, that traffic and other related impacts are not detrimental to the district. ...

IMC 18.06.100A, B.

The City has made a policy determination that, in some instances, its critical area regulations alone do not adequately protect identified critical areas. The broad policy statement is only applied to the limited C-Res and SF-E districts as supplementary protection for critical areas. There is no indication the City has prepared studies showing its critical areas regulations are inadequate to protect the critical areas within or adjacent to the challenged zoning districts. However, in light of the City's demonstrated commitment to urban density in its overall plan, and the minimal critical area low density designations, the City's policy is not clearly erroneous. We consider the relationship between the individual challenged districts and critical areas below.

For those areas within Issaquah designated below 4 dwelling units per acre (based upon the Board's "bright-line" or "safe harbor") do those areas:

- *Contain large scale, complex, high value critical areas that require the additional level of protection provided through lower densities than can be provided by the jurisdiction's existing critical areas regulations [Litowitz test – hydrologically focused]?*
- *Contain limited unique geologic or topographical features that require the additional level of protection provided through lower densities than can be provided by the jurisdiction's existing critical areas regulations [expansion of Litowitz test]?*
- *Contain existing equestrian communities [Bremerton]?*
- *Perpetuate an existing low density pattern?*
- *Fall within a "phasing area" where the city has adopted an explicit phasing program for the provision of urban services and facilities that*

*limits densities until a date certain, within the Plan's time horizon, when adequate urban services and facilities will be provided?*

**The GMA and Board basis for determining appropriate urban densities:**

In the following discussion, the Board addresses: 1) the “Bright Line” urban residential density (4 dwelling units per acre); 2) the “Litowitz Test” for lesser “appropriate” urban densities; 3) the Protection of Neighborhood Vitality and Character; and 4) Other Possible “Exceptions.”

**4 dwelling units/acre – the “Bright-Line” and safe harbor:**

Nowhere in the GMA, nor in CTED’s Guidelines<sup>22</sup> can one find a definition of the term “urban density,” let alone a definition of “appropriate” urban density. Even though the Act does not define urban density, it *requires* counties, in consultation with their cities, to size, locate and designate urban growth areas (UGAs) “within which urban growth<sup>23</sup> shall be encouraged and outside of which growth can occur only if it is not urban in nature.” RCW 36.70A.110. Significantly, as part of the UGA designation process, the GMA requires that “Each urban growth area *shall permit urban densities. . .*” *Id.* (emphasis supplied). Therefore, having a benchmark, a safe harbor or bright line to identify a baseline permissible urban density *provides a high degree of certainty and predictability* in the critical process of sizing,<sup>24</sup> locating and designating UGAs.<sup>25</sup> This UGA designation process is a critical coordination function under the GMA. The Act directs counties to designate the UGAs. However, there are almost 90 cities located within the four CPS counties. Thus, to avoid the “threat to the environment, sustainable economic development, and the health, safety and high quality of life enjoyed by the residents of this state<sup>26</sup>,” a high degree of *coordination* and consultation between each county and each of its jurisdictions is required.

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<sup>22</sup> Chapter 365-195 WAC

<sup>23</sup> “‘Urban growth’ refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of the land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands. . .” RCW 36.70A.030(17).

<sup>24</sup> Sizing the UGA is driven by the OFM population “range” forecasts for each county. The population forecast must be converted to an assumed person per household or dwelling unit figure. This yields a household or dwelling unit count. The dwelling unit count must then be converted to a dwelling unit per acre count to determine the amount of land to accommodate the forecast population; thereby, providing the basis for sizing the residential portion of the UGA. Similar calculations, not relevant in this matter, are undertaken to determine commercial and industrial land needs for sizing the UGA.

<sup>25</sup> By definition, all cities are within UGAs. RCW 36.70A.110(1). Thus, all cities shall “permit urban densities.” Also, in *LMI/Chevron v. Woodway*, CPSGMHB Case No. 98-3-0012, Final Decision and Order, (Jan. 8, 1998), at 23, the Board stated, “[T]he Board holds that the GMA requires *every* city to designate *all* lands within its jurisdiction at *appropriate urban densities.*” (Emphasis supplied).

<sup>26</sup> See GMA’s legislative findings, RCW 36.70A.010.

The GMA charges the Growth Boards with hearing appeals of local actions and determining whether those local actions comply with the goals and requirements of the GMA. *See* RCW 36.70A.250 – .345. So when an appeal was presented to this Board in 1995 to determine compliance with the UGA requirements of RCW 36.70A.110, it fell to the Board to interpret the Act and define necessary terms to give meaning to the legislation. Thus, to provide some predictability and certainty to the GMA planning process, and assist in the coordination function, the Board articulated an urban residential density [defining compact urban development] for purposes of determining compliance with the requirements of the Act.

That Board decision is the take off point for Petitioners’ arguments in this matter. In its 1995 *Bremerton* decision, the Board stated:

[T]he Board . . . adopts as a general rule a “bright line” at *four net dwelling units per acre*. Any residential pattern at that density, or higher, is clearly compact urban development . . .

*Bremerton*, at 50, (emphasis supplied).

The Board’s formulation of the 4 du/ac density as an appropriate urban density has withstood the test of time. For a decade it has provided a basis for coordinated planning and the necessary certainty and predictability for GMA planning in the CPS region. It has provided a baseline definition for appropriate urban densities for UGA designations, comprehensive land use plans and their implementing development regulations.

Significantly, although the GMA has been amended in every legislative session since its adoption in 1990, the Legislature has not seen fit to either specifically define “urban density” or otherwise modify the certainty and predictability arising from the Board’s formulation of this term. Nor have the courts altered the Board’s formulation. Consequently, the *certainty* and *predictability* that a residential density of 4 du/acre is an “appropriate urban density” continues to be acknowledged and accepted – a safe harbor in the tumultuous sea of GMA.

But there is constant tension between the need and desire for *certainty* and the need and desire for *flexibility*. It is significant that even in the Board’s 1995 *Bremerton* decision, the Board acknowledged the *need for flexibility and recognition of local discretion*. In *Bremerton*, the Board acknowledged that depending upon local circumstances, residential densities both higher<sup>27</sup> and lower<sup>28</sup> than 4 du/ac could be an “appropriate” urban density.<sup>29</sup>

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<sup>27</sup> “[Residential densities of] less than seven dwelling units per acre [are] not supportive of transit objectives.” *Bremerton*, at 49-50. In spite of the general planning principle that support of transit necessitates densities of 7 du/acre or more, the Board notes that it has never had case challenging urban

### The Litowitz Test:

Less than a year after the *Bremerton* decision, the Board had the opportunity to discuss the notion of flexible, yet appropriate, urban densities when it articulated circumstances [*i.e.*, predictability] where residential densities below 4 du/ac would be appropriate urban densities in land use plan designations. Several of the City of Federal Way's low residential density designations, adopted to provide additional protection for the Hylebos Creek Basin, were challenged by several property owners. In *Litowitz v. City of Federal Way* (*Litowitz*), CPSGMHB Case No. 96-3-0005, Final Decision and Order, (Jul. 22, 1996), the Board stated:

The GMA . . . establishe[s] a minimum level of critical areas protection, but do[es] not pre-empt a local government's discretion to select and effect in its plan a higher level of environmental protection. **The Board holds that when environmentally sensitive systems are large in scope (e.g. a watershed or drainage sub-basin), their structure and functions are complex and their rank order value is high, a local government may also choose to afford a higher level of protection by means of land use plan designations lower than 4 du/ac.**

*Litowitz*, at 12, (emphasis in original). In *Litowitz*, the Board found that the City's lower than 4 du/ac designations were *appropriate* urban densities, and upheld the City's action.

Note that jurisdictions have an explicit GMA duty to identify, designate and protect critical areas (as defined in the Act). RCW 36.70A.170, .172. This duty is "density blind" – critical areas must be protected whether they are found within resource lands, rural lands or urban lands, no matter the Plan or zoning "density" designation that is assigned. It is only when a determination is made that the existing critical areas regulations will not provide the needed level of protection that a jurisdiction may consider the use of density as an additional layer of protection to regulate critical areas. At this point, the jurisdiction is "balancing" and making trade-offs among its GMA

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densities along transit lines as not being appropriate urban densities. This further supports the notion of the Board's construction as a safe harbor.

<sup>28</sup> "[Residential densities below 4 du/ac] may be appropriate in an urban setting to avoid excessive development pressures on or near environmentally sensitive areas." *Bremerton*, at 50. Also, "[Residential densities below 4 du/ac may be an appropriate urban density where there are] unique area-wide circumstances (e.g. a major equestrian facility surrounded by 'horse-acre lots' or large areas with very steep slopes or wetlands). . ." *Bremerton*, at 49.

<sup>29</sup> The rationale articulated in *Bremerton*, a county case, was also applied and discussed in a subsequent city case involving densities below 4 du/ac for a specific area: *Benaroya v. City of Redmond* (*Benaroya I*), CPSGMHB Case No. 95-3-0072, Final Decision and Order, (Mar. 25, 1996); see also, *Benaroya I*, Finding of Compliance, (Mar. 13, 1997).

duties. The duty and responsibility to protect critical areas is being balanced against the duty and responsibility to provide for appropriate urban densities.

Since *Litowitz*, the Board has resolved several appeals where a plan's residential density designations below 4 du/ac have been challenged. In each case the decision has turned on: 1) whether the basis for the jurisdiction's lower density land use designations is to provide *added* protection to large scale, complex, high rank order value environmentally sensitive system; and 2) whether the designated area is sufficiently linked to the critical area in question.<sup>30</sup> In some cases [*e.g. Litowitz* and *MBA/Brink*], the exercise of local discretion to protect critical areas was deemed appropriate and found to be compliant with the GMA. In others [*e.g. LMI/Chevron*], where the Board has found noncompliance, it has concluded that the rationale for the lower residential densities was not to provide *added* protection to environmentally sensitive areas but to perpetuate existing low-density residential development patterns – sprawl.

#### Protection of Neighborhood Vitality and Character:

Encouraging the preservation of existing housing stock and ensuring the vitality and character of established residential neighborhoods is a clear GMA directive. RCW 36.70A.020(4) and .070(2). However, as the Board has explained,

[E]nsuring the vitality and character of neighborhoods is a legitimate city objective – indeed, it is directed by RCW 36.70A.070(2). However, *the requirement to “ensure neighborhood vitality and character” is neither a mandate, nor an excuse, to freeze neighborhood densities at their pre-GMA levels.* The Act clearly contemplates that infill development and increased residential densities are desirable in areas where service capability already exists, *i.e.*, in urban areas – while also requiring that such growth be accommodated in such a way as to “ensure neighborhood vitality and character.” The Board's conclusion that these GMA objectives are not mutually exclusive rests upon several fundamental cornerstones of the GMA – that cities are to be the focal points of new urban growth, that the Act contemplates well-furnished and well-designed compact urban development, and that the development process must be

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<sup>30</sup> In *LMI/Chevron v. Town of Woodway (LMI/Chevron)*, CPSGMHB Case No. 98-3-0012, Final Decision and Order, (Jan. 8, 1999), the Board found that there was no large, high rank order critical area with complex structure and functions that justified precluding all development from 50 acres of a 60-acre subarea plan. In *MBA/Brink v. Pierce County (MBA/Brink)*, CPSGMHB Case No. 02-3-0010, Final Decision and Order, (Feb. 2003), the Board found that there was a large, high rank order critical area with complex structure and functions [Chambers Creek] within the Parkland-Spanaway-Midland Community Plan area [12,842 total acres in the PSMC Subarea] of unincorporated Pierce County, that justified residential densities of less than 4 du/ac in *three areas* [1,934 acres] so designated [in the Subarea Plan and zoning]; but the Board found another *five areas* [1,089 acres] noncompliant since the isolated and sporadic critical areas within those areas could be adequately protected by existing critical areas regulations.

timely, predictable and equitable, to developers and residents alike.  
(citations omitted).

*Benaroya I v. City of Redmond*, CPSGMHB Case No. 95-3-0072c, Final Decision and Order, (Mar. 25, 1996), at 21, (emphasis supplied).<sup>31</sup>

The Board has also stated, “It is clear that existing housing stock and neighborhoods may be maintained and preserved, however, *existing low-density patterns of development cannot be perpetuated.*” *MBA/Brink v. Pierce County*, CPSGMHB Case No. 02-3-0010, Final Decision and Order, (Feb. 4, 2003), at 13, (emphasis supplied).<sup>32</sup>

Other Possible “density trade-offs”:

As noted in footnote 26, *supra*, in the Bremerton decision the Board stated, “[Residential densities below 4 du/ac may be an appropriate urban density where there are] unique area-wide circumstances (e.g. a major equestrian facility surrounded by ‘horse-acre lots’ or large areas with very steep slopes or wetlands). . .” *Bremerton*, at 49. Even in 1995 the Board acknowledged that there may be unique local circumstances such as existing equestrian communities or extensive geological features that would merit low residential density designations within urban areas. However, the Board does not issue advisory opinions. [RCW 36.70A.290(1)]. The Board has not previously had a case presented that explored the potential trade-offs to the 4 dwelling units per acre density benchmark.

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<sup>31</sup> It is noteworthy that in this same decision, in reviewing application of urban density provisions to a large single-ownership parcel, the Board discussed “net density” and “average net density” in deriving appropriate urban densities. The Board stated,

The Board distinguishes here between the “net density” and “average net density,” the latter of which equals the average density of a property with multiple land use designations. For example, on a 60 acre residential ownership consisting of three 20 acre portions, designated for 2 du/acre, 4 du/acre and 6 du/acre, the average density equals 4 du/acre. . . In determining whether a given property is designated by the City for an *appropriate urban density*, it is necessary to look at this “average net density.” . . . The Board holds that on parcels large enough to have more than one density designation, the Board will look at the average net density of that entire ownership. If the average net density of a parcel is 4 du/acre or greater, that collective designation is clearly urban, and requires no further Board inquiry. This would permit a city to have clustered heavy density on a large parcel, but still allow for lower densities elsewhere on the property for environmental reasons (e.g. a stream running through it) or for buffering of adjacent less intense land uses.

*Benaroya I*, at 33, (emphasis supplied).

<sup>32</sup> In Board’s 1999 decision in *LMI/Chevron*, at 27-42, the Board discussed the City’s low-density residential pattern and found the City’s efforts to perpetuate historic low-density development noncompliant with the Act. Also, in *Jensen v. City of Bonney Lake*, CPSGMHB Case No. 04-3-0010, Final Decision and Order, (Sep. 20, 2004), the Board agreed with Petitioners that continuing the “Very Low” and “Low” residential density designations for over 50% of the City’s land area perpetuated a historical trend of sprawl; the record demonstrated that there was no “Litowitz” rationale for these designations in any of the affected areas.

Additionally, the Board can conceive of appropriate urban densities below 4 du/ac where a city<sup>33</sup> is balancing its GMA duty to provide adequate urban services and facilities with its duty to provide urban densities. Thus, it is possible that if a city has an explicit phasing program that sequences and times the provision of urban services and facilities to coincide with the jurisdiction's capital facilities and transportation financing plans and programs, lower densities may be appropriate for an established time horizon, particularly if offset by much higher densities where capital facilities are already in place. It is within this GMA context that the Board turns to the specific challenge to the contested zoning districts in Issaquah's Plan and Zoning Map Updates.

*Is there a GMA supported basis for Issaquah's designation of 16% of its residential lands<sup>34</sup> at a density of less than 4 du/ac?*

Issaquah has designated 6,770 total acres for various land uses. 2,692 acres are designated for residential uses, of which 440 acres are in zoning districts which limit densities to less than 4 du/ac: 47 acres in Conservancy Residential District with a limitation of 1 du/5ac, and 393 acres in Single Family Estates District with a limitation of 1.24 du/ac. Thus 6% of the total designated area and 16% of the area designated for residential uses is limited to densities of less than 4 du/ac. City Profile, at 2.

The Conservancy Residential and Single Family Residential Districts in the Zoning Map Update, affecting 6% of the City's land area, are below the regionally accepted norm – 4 du/ac – for an appropriate urban density within an urban area. On their face, they do not comply with the goals or requirements of the Act. [RCW 36.70A.110 or .020(1).] However, it is appropriate to look at the local circumstances and rationale that led the City to continue to plan for such low-density residential development and to determine whether any of the “exceptions” apply and whether the City is balancing other goals and requirements of the Act.

Petitioner acknowledges the Board has recognized exceptions to the bright line rule to protect critical areas with specific attributes. Futurewise PHB, at 11. Petitioner claims that none of the areas identified by the City of Issaquah meet the criteria to qualify for reduced densities (*i.e.*, environmentally sensitive systems large in scope, with complex structure and function and high rank order value—*Litowitz* test). Futurewise PHB, at 12. Petitioners allege specifically that one identified area already contains high-density commercial zoning, another contains high-density residential, and none of the identified areas are of the scale, complexity, and value necessary to qualify for a *Litowitz* density exception (citations omitted). Futurewise PHB, at 13-14. Petitioner also asserts that although the GMA encourages the preservation of the vitality and character of established residential neighborhoods, patterns of low-density development cannot be perpetuated

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<sup>33</sup> By definition all cities are within UGAs, yet their corporate boundaries are set, there is little flexibility if “sizing” the corporate boundaries of a city like there is in “sizing” the UGA in the unincorporated areas.

<sup>34</sup> City Profile, at 2.

without constituting sprawl and violating the GMA (citations omitted). Futurewise PHB, at 14.

City of Issaquah contends that the selective use of low-density zoning (single family estate and conservancy residential) is directly linked to the critical areas found in specific areas of the City. City Response, at 9. The City argues that critical areas located in zoning districts challenged by Petitioner are not isolated, sporadic occurrences, as Petitioner claims, but large environmentally sensitive systems with complex structures and functions and high rank order value. City Response, at 17-18. Issaquah contends that the GMA does not prevent a city from taking cautions beyond buffers to protect critical areas against environmental impact, and that the GMA encourages local discretion in deciding how to protect these areas. HOM, at 36.

The City identifies (1) the North Issaquah Area, containing designated aquifer recharge areas, designated wetlands, and containing a Class 2S salmonid-bearing stream, along with overlapping steep slopes, and erosion, seismic, and landslide hazard areas, with subdivisions not on sewer lines and without capacity for additional drain fields in light of the underlying aquifer recharge area; (2) the South Issaquah Area, containing a Class 1 stream and containing or abutting floodway and/or 100 year floodplain, and overlapping seismic hazard areas; (3) the Tibbetts Creek Area, containing a Class 2S salmonid bearing stream and critical areas including one or more of the following: erosion hazards, floodway, floodplain, seismic hazards, wetlands, and steep slopes, many with inclines of more than 40%; and (4) the West Issaquah Area, containing overlapping erosion hazard and landslide hazard critical areas and steep slopes. City Response, at 5-8.

### Relationships to Critical Areas

The City did not present specific studies applying the Litowitz test as a basis for concluding the city's critical areas regulations are *not sufficient* to protect these areas. However, the Issaquah critical areas maps confirm the City's position that critical areas lie within or adjacent to many of the challenged zoning districts which are clustered in four general areas and shown on HOM Exhibit No.1. For clarity and consistency we use the City's titles for the four geographic areas. we refer to them as: 1) the North Issaquah Area, 2) the South Issaquah Area, 3) the Tibbetts Creek Area, and 4) the West Issaquah Area. For ease of reference, the City compiled a visual summary from the record of the areas in question and their critical areas in the maps attached the City Response as Exhibits A-1 through A-7, B-1, C-1 and C-2, and D-1 through D-2. The following descriptions are based on inspection of these critical areas maps and HOM Exhibit No. 1. The statements of percentage of coverage are estimations, based on visual inspection of the maps, for purposes of communicating approximate extent of coverage.

### Tibbetts Creek Area<sup>35</sup>

The Tibbetts Creek Area contains two SF-E districts and three C-Res districts. The largest of the SF-E districts straddles Tibbetts Creek, a class 2 salmonid stream running North and South through the center of the area. The majority of the area is designated Erosion Hazard and approximately 1/3 of the area is designated Seismic Hazard. The majority of second SF-E district is designated seismic hazard and a class 2 salmonid stream crosses it. The three C-Res districts are smaller and all have erosion hazard and/or seismic hazard designations on all or significant portions of the sites. Tributaries of Tibbetts Creek cross two of these C-Res districts.

### South Issaquah Area<sup>36</sup>

An SF-E district is located in the South Issaquah area. The entire property is designated seismic hazard. A class 1 stream runs through the west edge of the property and the 100-year flood plain of the stream occupies 1/5 of the site.

### West Issaquah Area.<sup>37</sup>

There are two C-Res districts and three SF-E districts in the West Issaquah Area. The smaller of the two C-Res districts cannot be developed because it is comprised of the dedicated open space buffer of a subdivision and a parcel designated open space under an open space taxation program. The majority of the larger C-Res district is designated erosion hazard, and a class 2 stream traverses the district. The three SF-E districts have the erosion hazard designation on all or a significant portion of the property and one has the landslide hazard designation on 85% of the site.

### The North Area.<sup>38</sup>

The North Area contains three SF-E districts, one of which is a single family residential subdivision which will be discussed in the next section below. A second SF-E district northwest of the subdivision, is designated erosion hazard on 75% of the site and landslide hazard on 60 % of the site. The third SF-E district, a cluster of three areas separated by roadways, has a salmon stream traversing the southerly 1/3 of the area. The entire cluster is situated in a high aquifer recharge area. Storm water facilities preclude residential development on two parcels in the southerly portion of the district.

Issaquah's geography includes portions of the slopes of Grand Ridge and Cougar, Squak and Tiger Mountains as well as a valley floor traversed by Issaquah Creek and Tibbetts

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<sup>35</sup> HOM Ex. 1 and Map C-1

<sup>36</sup> HOM Ex. 1 and Map B-1

<sup>37</sup> HOM Ex. 1 and Map D-1

<sup>38</sup> HOM Ex. 1, Maps B-1 and A-3

Creek, their tributaries and associated flood ways and flood plains. It contains an extensive array of critical areas. Under these circumstances it is not unreasonable for the City to augment its critical area regulations with a selective use of low density residential zoning, provided the use of such zoning is not a guise for continuing existing patterns of low density development. Our review of the relationship of the challenged zoning districts to critical areas indicates that for the most part the City is using these districts in a manner which augments its critical areas regulations rather than to continue existing low density development patterns. One area that raises the question of perpetuating existing low density development is addressed next.

### Perpetuating Low Density Development

The City Response describes the single family residential subdivision in the North Issaquah Area, referenced above, as follows:

The large single family estate area comprised of the Overdale Park subdivision was developed over 40 years ago and was not annexed from the County until 2000. This development of nearly 150 houses contains no sewer lines and is served by individual septic systems. Comprehensive Plan Vol. 2, Appendix 9, p. LU-73. There is no capacity for additional drainfields, especially in light of the underlying aquifer recharge area. *Id.* at LU-68; Issaquah Comprehensive Plan Final EIS, Appendix D, Figure #17. As indicated by the Sammamish Plateau Water and Sewer District Freegard Basin Wastewater Comprehensive Plan, the Sammamish Plateau Water and Sewer District has planned future sewer service for the area, but it is as yet unfunded, and it is unclear when such service will be implemented. This area is not identified as a project within the District's current 20 year Capital Improvement Program. See Map A-5. The City's existing Comprehensive Plan land use designation of Low Density Residential provides potential for an upzone of Overdale Park to a higher density zoning after the area receives sewer service, subject to evaluation consistent with the Issaquah Comprehensive Plan – Land Use Element, Table L-3 and other relevant sections of the Comprehensive Plan and Issaquah Municipal Code.

City Response, at 6-7

The question here is whether Issaquah's approach, applying a zoning designation of less than 4 du/ac under the circumstances described above, perpetuates low density development. In this case the City is not the provider of sewer service and the sewer district has not established a time certain for the provision of sewer service. The City may be able to influence the sewer districts timing policies but it cannot mandate them.

The City has the latitude under the existing land use designation to change the zoning to a higher density residential district, but no policy commitment to do so. If the City were to

change the zoning district to one that permitted 4 du/ac<sup>39</sup> it would be an incentive for the sewer district to establish a time certain for extension of sewer service to the subdivision. The higher density zoning together with a time certain for sewer service would support the redevelopment of this area at appropriate urban densities.

Issaquah's adoption of Ordinance No. 2404, specifically the continuation in the Zoning Map Update of Single Family Estate zoning on the area comprised of the Overdale Park subdivision, in the absence of policy commitment in the Plan Update to permit appropriate urban densities at the time sewer service becomes available, was **clearly erroneous** and **did not comply** with compliance review requirements of RCW 36.70A.130 and **does not comply** with RCW 36.70A.110 [permit urban densities] and **was not guided by** Goal 1 – RCW 36.70A.020(1) [encourage development in urban areas where infrastructure exists or can be provided in an efficient manner]. Therefore, the Board will **remand** the Plan Update and Zoning Map Update, directing the City of Issaquah to comply with the requirements of the Act.

### Conclusions

- Issaquah is able to accommodate its share of the 20-year growth forecast by the Office of Financial Management, and allocated by the County, now and in the future.
- The City is encouraging and stimulating urban growth.
- Issaquah does provide for compact urban growth consistent with those Goals of the Act that are typically fulfilled and furthered by providing for urban densities.
- The City has made a policy determination that, in some instances, its critical area regulations alone do not adequately protect identified critical areas
- The Board's review of the relationships between the challenged zoning districts and designated critical areas indicates that, for the most part, the City is using these districts to augment its critical areas regulations and protections rather than to perpetuate low density development patterns.
- The continuation of Single Family Estate zoning on the area comprised of the Overdale Park subdivision, in the absence of a policy commitment to permit appropriate urban densities at the time sewer service becomes available, **does not comply** with the requirements RCW 36.70A.110(1) to encourage urban growth within urban growth areas.
- Issaquah's adoption of Ordinance No. 2404, specifically the continuation in the Zoning Map Update of Single Family Estate zoning on the area comprised of the

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<sup>39</sup> Redevelopment at increased densities prior to the availability of sewer service could be precluded through subdivision and short subdivision review.

Overdale Park subdivision, in the absence of policy commitment in the Plan Update to permit appropriate urban densities at the time sewer service becomes available, was **clearly erroneous** and **did not comply** with compliance review requirements of RCW 36.70A.130 and **does not comply** with RCW 36.70A.110 [permit urban densities] and **was not guided by** Goal 1 – RCW 36.70A.020(1) [encourage development in urban areas where infrastructure exists or can be provided in an efficient manner]. Therefore, the Board will **remand** the Plan Update and Zoning Map Update, directing the City of Issaquah to comply with the goals and requirements of the Act.

## **V. REQUEST FOR INVALIDITY**

The Board has previously held that a request for invalidity is a prayer for relief and, as such, does not need to be framed in the PFR as a legal issue. *See King County v. Snohomish County*, CPSGMHB Case No. 03-3-0011, Final Decision and Order, (Oct. 13, 2003) at 18. Nevertheless, here, Petitioner has framed the request for invalidity as a Legal Issue:

**Does adoption of the challenged provisions of Ordinance 2404 substantially interfere with the goals of the Growth Management Act, thereby warranting invalidity?**

*See* PHO, at 6.

### **Applicable Law**

RCW 36.70A.302 provides:

- (1) A board may determine that part or all of a comprehensive plan or development regulation are invalid if the board:
  - (a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;
  - (b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and
  - (c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.
- (2) A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or county. The determination of invalidity does not apply to a completed development permit application for a project that

vested under state or local law before receipt of the board's order by the City or city or to related construction permits for that project.

### Discussion

The Board has concluded above that the continuation of Single Family Estate zoning on the area comprised of the Overdale Park subdivision, in the absence of a policy commitment in the Plan Update to permit appropriate urban densities at the time sewer service becomes available, was not guided by Goal 1 – RCW 36.70A.020(1) [encourage development in urban areas where infrastructure exists or can be provided in an efficient manner].

The Overdale Park subdivision is fully developed with nearly 150 houses on large lots. The subdivision currently contains no sewer lines and is served by individual septic systems. There is no capacity for additional drainfields.<sup>40</sup> Consequently, there is no prospect of additional development or redevelopment at non-urban densities during the time required for the City to amend the Plan Update and/or Zoning Map Update in compliance with the Act.

### Conclusion

The continued validity of the Plan Update and Zoning Map Update, during the time period required for the City to make amendments which comply with the Act, would not substantially interfere with fulfillment of the Goals of the Act. Therefore the Board will not make a determination of invalidity.

### V. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the GMA, prior Board Orders and case law, having considered the arguments of the parties, and having deliberated on the matter the Board ORDERS:

- The continued validity of the Plan Update and Zoning Map Update, during the time period required for the City to make amendments which comply with the Act, would not substantially interfere with fulfillment of the Goals of the Act. Therefore, the Board does not determine Ordinance 04-2404 to be invalid. Legal Issue No. 2 is **dismissed**.
- Issaquah's adoption of Ordinance No. 2404, specifically the continuation in the Zoning Map Update of Single Family Estate zoning on the area comprised of the Overdale Park subdivision, in the absence of a policy commitment in the Plan

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<sup>40</sup> See description *supra*, at

Update to permit appropriate urban densities at the time sewer service becomes available, was **clearly erroneous** and **does not comply** with compliance review requirements of RCW 36.70A.130 and **does not comply** with RCW 36.70A.110 [permit urban densities] and **was not guided by** Goal 1 – RCW 36.70A.020(1) [encourage development in urban areas where infrastructure exists or can be provided in an efficient manner].

- The Board **remands** Ordinance No. 2404, the Plan Update and Zoning Map Update, specifically the Overdale Park Single Family Estate District, to the City of Issaquah with direction to take appropriate legislative action to amend, modify or otherwise revise the Plan Update and/or Zoning Map Update to provide for appropriate urban densities as required by the goals and requirements of the Act, as interpreted by the Board as set forth in this Order. The compliance schedule is as follows.
  1. By no later than January **17, 2006**, Issaquah shall take appropriate legislative action to comply with the requirements of RCW 36.70A.110(1).
  2. By no later than **January 31, 2006**, Issaquah shall file with the Board an original and four copies of the legislative enactment(s) adopted by Issaquah to comply with RCW 36.70A.110(1) along with a statement of how the enactments comply with RCW 36.70A.110(1) (**Statement of Actions Taken to Comply - SATC**). The City shall simultaneously serve a copy of the legislative enactment(s) and compliance statement, with attachments, on Petitioner. By this same date, the City shall also file a “**Compliance Index**,” listing the procedures (meetings, hearings etc.) occurring during the compliance period and materials (documents, reports, analysis, testimony etc.) considered during the compliance period in taking the compliance action.
  3. By no later than **February 14, 2006**,<sup>41</sup> the Petitioner may file with the Board an original and four copies of Response to the City’s SATC. Petitioner shall simultaneously serve a copy of their Response to the City’s SATC on the City.
  4. By no later than **February 21, 2006**, the City may file with the Board an original and four copies of the City’s Reply to Petitioner’s Response, if any. The City shall simultaneously serve a copy of such Reply on Petitioner.

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<sup>41</sup> December 5, 2005 is also the deadline for a person to file a request to participate as a “participant” in the compliance proceeding. *See* RCW 36.70A.330(2). The Compliance Hearing is limited to determining whether the City’s remand actions comply with the Legal Issues addressed and remanded in this FDO.

5. Pursuant to RCW 36.70A.330(1), the Board hereby schedules the Compliance Hearing in this matter for **10:00 a.m. February 28, 2006** at the Board's offices.

If Issaquah takes the required legislative action prior to the January 17, 2006, deadline set forth in this Order, the City may file a motion with the Board requesting an adjustment to this compliance schedule.

If the parties [1000 Friends v. Issaquah] so stipulate, the Board will consider conducting the compliance proceeding telephonically.

So ORDERED this 20<sup>th</sup> day of July, 2005.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Bruce C. Laing, FAICP  
Board Member

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Edward G. McGuire, AICP  
Board Member

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Margaret A. Pageler  
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.

## ATTACHMENT - A

### Procedural History

On January 21, 2005, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from the 1000 Friends of Washington (**Petitioner** or **1000 Friends or Futurewise**<sup>42</sup>). The matter was assigned Case No. 05-3-0006, and is hereafter referred to as *1000 Friends v. Issaquah*. Board member Bruce C. Laing is the Presiding Officer (**PO**) for this matter. Petitioner challenges the City of Issaquah's (**Respondent** or the **City**) adoption of Ordinance No. 2404 which amends the City's Comprehensive Plan and Zoning Map. The basis for the challenge is noncompliance with various provisions of the Growth Management Act (**GMA** or **Act**).

On January 27, 2005, the Board issued a Notice of Hearing setting a date for a prehearing conference (**PHC**) and establishing a tentative schedule for the case.

On January 27, 2005, the Board received a Notice of Appearance from Wayne D. Tanaka representing the City.

On February 9, 2005 the Board received a Notice of Association from Lauren Burgon as co-counsel for Petitioner.

On February 22, 2005, the Board received Respondent's Index of Record (**Index**).

On February 22, 2005, the Board conducted the PHC at Suite 2430, Union Bank of California Building, 900 Fourth Avenue, Seattle. Board member Bruce Laing, Presiding Officer in this matter, conducted the conference, with Board members Ed McGuire and Margaret Pageler in attendance. John Zilavy represented Petitioner and Wayne Tanaka represented Respondent City of Issaquah. Vicki Orrico, co-counsel for Respondent, was present with Mr. Tanaka. The Board discussed with the parties the possibility of settling or mediating their dispute to eliminate or narrow the issues. The Board then reviewed its procedures for the hearing, including the composition and filing of the Index to the record below; core documents, exhibit lists and supplemental exhibits, dispositive motions, the Legal Issues to be decided, and a Final Schedule. During the discussion of Petitioner's Legal Issues, Mr. Tanaka distributed a one page outline entitled "Statement of Issues 1000 Friends V. Issaquah", setting forth issues the City intends to raise and argue in its response brief.

On February 23, 2005, the Board issued its Prehearing Order setting forth a final schedule for proceedings in this case and the legal issues which the Board will address.

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<sup>42</sup>Subsequent to the filing of the PFR, 1000 Friends of Washington changed its name to Futurewise. The Case name will continue to reference 1000 Friends of Washington, but the text will use the current name, Futurewise.

On April 26, 2005, the Board received Petitioner's Prehearing Brief (**PHB**) with four attachments.

On May 10, 2005, the Board received the City's Prehearing Brief (**Response**) with 32 attachments and two accompanying maps.

On May 19, 2005, the Board received Petitioner's table of exhibits attached to the PHB.

On May 19, 2005, the board received Petitioner's Reply Brief (**Reply**).

On May 25, 2005, the Board conducted the Hearing on the Merits (**HOM**) in the Fifth Floor Conference Room, 900 Fourth Avenue, Seattle, Washington. Board Members Margaret Pageler, Edward McGuire and Bruce Laing, Presiding Officer, were present for the Board. Lauren Burgon and John Zilavy represented the Petitioner. Wayne Tanaka and Vicki Orrico represented the City. Court reporting services were provided by Eva Jankovits, Beyers & Anderson, Inc. During the HOM the Board received from the City a map entitled City of Issaquah Zoning Map, 11/29/04, Ord. 2404 (**HOM Exhibit No.1**). The parties agreed that subsequent to the HOM the City would advise the Board, with copy to Petitioner, whether Issaquah Ordinance No. 2404 was the only ordinance adopted by the City as part of the 2004 comprehensive plan review and update. HOM convened at 10:00 a.m. and adjourned 11:40 a.m.

On May 27, 2005, the Board received Issaquah's Response to Inquiry Regarding Ordinances with three attachments.

On May 31, 2005, the Board received the HOM transcript for Beyers and Anderson, Inc.

On June 3, 2005, the Board received Futurewise' Response to Issaquah's Post Hearing-on- the-Merits Submittal.

On July 20, 2005, the Board issued its Final Decision and Order on CPSGMHB Case No. 05-3-0006.